RECORD AND BRIEFS

FILED

Nos. 13-354 and 13-356

IN THE

Supreme Court of the United States

KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,
Petitioners,

v.

HOBBY LOBBY STORES, INC., ET AL.,
Respondents.

CONESTOGA WOOD SPECIALTIES CORP., ET AL.,
Petitioners,

v.

KATHLEEN SEBELIUS, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Tenth and Third Circuits

BRIEF OF THE U.S. WOMEN'S CHAMBER OF COMMERCE AND THE NATIONAL GAY & LESBIAN CHAMBER OF COMMERCE AS *AMICI CURIAE* IN SUPPORT OF KATHLEEN SEBELIUS ET AL.

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INTEREST OF THE *AMICI CURIAE*[1]

The U.S. Women's Chamber of Commerce is a non-profit organization designed to unify the collective strength of women in the U.S. economy. Using a platform of influence, innovation, and opportunity, the Women's Chamber works with and for its members to grow successful businesses and careers. The Women's Chamber supports strong education and employment opportunities with fair pay and advancement, and promotes work environments that are hospitable to women and families, in an effort to transform the economics of the labor market and dismantle barriers that stifle sustainable economic growth. The Women's Chamber often files briefs to inform courts of legal and policy issues of concern to its membership.

The National Gay & Lesbian Chamber of Commerce is the largest global not-for-profit advocacy organization dedicated to expanding the economic opportunities and advancements of the LGBT business community. The chamber works to ensure implementation of pro-business, LGBT-inclusive policies at the federal, state, and local levels of government. The chamber often participates in litigation at the state and federal level on issues important to its members.

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. Letters from the parties consenting to the filing of *amicus* briefs have been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

Corporations are not merely aggregations of individuals – they are separate legal entities that hold rights and responsibilities distinct from those of their owners and operators. At the heart of these cases is the question whether for-profit corporations have the right to exercise religion under the Religious Freedom Restoration Act ("RFRA"). Until the decisions of some of the lower courts in these cases, no court had ever answered that question in the affirmative. Nor should this Court, for such a holding could result in a host of unintended consequences that would thwart effective corporate governance and management.

First, a decision holding that a corporation may exercise religion as a "person" under RFRA would substantially complicate corporate governance, even for those companies that intend to remain secular. Individuals and organizations motivated by religion could seek to influence corporate governance in a number of ways, including proxy contests and shareholder derivative actions designed to establish or alter a target company's religious identity. Indeed, in recent years, close to one-quarter of shareholder proposals to Fortune 200 companies have been advanced by religious organizations, public policy groups, or social investment funds seeking to influence corporate policy. Nor would close corporations be immune from disruption. Stakeholders in close corporations often disagree about corporate policy. Adding RFRA accommodations to management discussions could create further dissension among shareholders, with majority shareholders of one view taking steps to squeeze out minority shareholders of another. Even if such efforts are unsuccessful, corporations will be forced to invest significant time and resources to defend against them.

Second, a holding recognizing corporate free-exercise rights, by allowing for-profit corporations to become vehicles for religious expression, threatens to draw corporate stakeholders into divisive debates over contentious social issues and thereby jeopardize effective corporate management. Such a ruling would force certain companies to navigate internal debates with employees over important benefits and protections based on religious objections – from compliance with minimum coverage requirements for employer-sponsored health plans, to federal antidiscrimination and wage laws, and more. These debates could sow dissension between labor and management based on religious differences and imperil efforts to create a welcoming and diverse workplace.

Third, a ruling that invites some corporations but not others to avoid compliance with generally applicable federal rules on religious grounds would result in an uneven regulatory playing field. It is unlikely that Congress ever contemplated such a result when it enacted RFRA, and this Court should not interpret the Act to produce such market-skewing results.

ARGUMENT

Corporations are the primary engines of growth for the American economy. They are responsible for generating more than $2 trillion of the U.S. gross domestic product and for the employment of 87 million Americans. *See* Bureau of Economic Analysis, News Release, Table 9 (Dec. 20, 2013) (*available at* http://www.bea.gov/newsreleases/national/gdp/2013/pdf/gdp3q13_3rd.pdf) (last visited Jan. 15, 2014); U.S. Small Business Admin., Firm Data (2007), (*available at* http://archive.sba.gov/advo/research/us_lfo.pdf) (last visited Jan. 27, 2014).

Corporations are legal constructs characterized by distinct rights and responsibilities that arise under a host of federal and state laws. At its core, the corporate form allows individuals to operate collectively as a distinct legal entity in pursuit of a common enterprise. *See, e.g.*, *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) (noting that "incorporation's basic purpose is to create a distinct legal entity, with legal rights, obligations, powers, and privileges different from those of the natural individuals who created it, who own it, or whom it employs").

One of the questions at the heart of this case is whether the right to exercise religion under RFRA is a right that for-profit corporations hold, and may assert, as independent entities.[2] *Amici* respectfully submit that the answer to that question has always been no, and it should remain so given the disruptive and unintended consequences that would result from changing course.

Prior to these cases, no court had ever held that a for-profit corporation possesses religious free exercise rights.[3] There is good reason for that rule. Recogniz-

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[2] *Amici* do not dispute that this Court and others have recognized the free-exercise rights of non-profit and religious organizations. The sole focus of this brief is whether RFRA should be interpreted to permit for-profit corporations to exercise religion.

[3] *See Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1169 (10th Cir. 2013) (en banc) (Briscoe, C.J., concurring in part and dissenting in part) ("[N]ot a single case, until now, has extended RFRA's protections to for-profit corporations."); *Conestoga Wood Specialties Corp. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 384 (3d Cir. 2013) ("[W]e are not aware of any case preceding the commencement of litigation about the Mandate, in which a for-profit, secular corporation was itself found to have free exercise rights."); *Gilardi v. U.S. Dep't of Health & Human Servs.*, 733 F.3d 1208, 1213, 1215 (D.C. Cir. 2013) (opinion of Brown, J.) ("[T]he Court has never seriously considered such a claim by a secular corporation" and "for now,

ing such rights would generate costly and destabilizing disputes between corporate stakeholders, inject religious questions into corporate management, and create an uneven regulatory playing field among corporate actors in the marketplace. These conflicts will result in substantial distractions for companies of all types and sizes, diverting resources away from the core functions of American business: to innovate, maximize shareholder value, create jobs, and grow the U.S. economy.

I. Recognizing a Corporate Right to Exercise Religion Would Substantially Complicate Corporate Governance.

Amici are committed to the defense and promotion of corporate rights and responsibilities that facilitate the efficient organization, management, and operation of American business. Corporate religious free-exercise is not one of those rights. A decision to bestow free-exercise rights on for-profit corporations would not advance corporate interests. Rather, it would imperil them by opening new avenues for individuals to use the corporate form to wage battles over quintessentially individual religious beliefs.

Corporate law provides a roadmap for how religious disputes could interfere with a secular company's core business operations. Religious organizations are already active participants in corporate governance debates. *See* James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2012: A Report on Corporate*

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we have no basis for concluding a secular organization can exercise religion."); *Korte v. Sebelius*, 735 F.3d 654, 695 (7th Cir. 2013) (Rovner, J., dissenting) ("[T]oday the court holds . . . that a secular, for-profit corporation possesses its own right to the free exercise of religion. . . . It is an unprecedented holding . . . .").

Governance and Shareholder Activism, at 7 (2012) (*available at* http://www.proxymonitor.org/pdf/pmr_04.pdf) (last visited Jan. 15, 2014) (reporting that 25 percent of shareholder proposals to Fortune 200 companies in recent years were made by religious organizations, public policy groups, or social investment funds "with express interests beyond mere share-price maximization"). It is reasonable to assume that such activities would expand if this Court were to hold that for-profit corporations as entities can exercise religion.[4] Such a ruling could create new disputes about any given corporation's religious identity, including whether such an identity exists, how it should be determined, and what accommodations, if any, should be sought on its basis.

Attempts to influence corporate governance could take several forms. An activist investor or organization might, for instance, solicit proxy votes designed to exercise a corporation's religious identity by changing the composition of corporate boards, amending bylaws, or otherwise guiding corporate decisions.[5] If successful, such actions could cause tradi-

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[4] A similar result followed this Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). *See* Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923, 938 (2013) (reporting that public company shareholder proposals on political spending have become "more common than proposals on any other topic" following *Citizens United*); James R. Copland & Margaret M. O'Keefe, *Proxy Monitor 2013: A Report on Corporate Governance & Shareholder Activism*, at 12 (2013) (*available at* http://www.proxymonitor.org/pdf/pmr_06.pdf) (last visited Jan. 27, 2014) (reporting that Fortune 250 companies have faced an increasing number of shareholder proposals related to their political spending or lobbying since *Citizens United*).

[5] *Cf.* Lockheed Martin, Form 8-K, at 3 (Apr. 27, 2009) (*available at* http://www.sec.gov/Archives/edgar/data/936468/000119312509088494/d8k.htm) (last visited Jan. 27, 2014) (reporting on

tionally secular corporations to seek exemptions from federal laws based on the free exercise of religion.

Shareholders might also file religiously motivated derivative actions seeking RFRA exemptions on behalf of the corporation.[6] The creation of corporate free-exercise rights could lead these shareholders to assert that corporate management has an obligation to prevent harm to the exercise of corporate religion by seeking these exemptions. Even if such suits ultimately failed to persuade a court on the merits, they could force directors to take a side in the religious fight pursuant to the demand requirement.[7] In other words, boards would either have to give in to the demands of shareholders to bring suits to vindicate corporate religious interests, or refuse such suits and thereby anger religiously motivated shareholders. While derivative suits are common to the operation of modern American corporations,[8] as far as *amici*

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shareholder proposal from The Sisters of Mercy of the Americas, *et al.*, to require the company to report to shareholders on "certain information relating to the Corporation's space-based weapons program"); Bruce Edward Walker, Faith-Based Proxy Resolutions and GMOs (Mar. 25, 2013) (*available at* http://blog.acton.org/archives/52209-faith-based-proxy-resolutions-and-gmos.html) (last visited Jan. 16, 2014) (reporting on religious groups' shareholder resolutions before Dow Chemical, E.I. Du Pont de Nemours and others to report on plans to remove genetically modified organisms from their products).

[6] "A derivative proceeding generally may be described as an equitable remedy in which a shareholder asserts on behalf of a corporation a claim not belonging to the shareholder, but to the corporation." 13 FLETCHER CYC. CORP. § 5939.

[7] "[I]n the usual case, a shareholder seeking to assert a claim on behalf of the corporation must first exhaust intracorporate remedies by making a demand on the directors to obtain the action desired." *Id.* § 5963.

[8] *See* Jessica Erickson, *Corporate Governance in the Courtroom: An Empirical Analysis*, 51 WM. & MARY L. REV. 1749, 1760

are aware, they have not yet been used as vehicles to advance shareholders' religious interests.

It is likely that many efforts to advance religious interests through the corporate form would fail on the merits. But even so, corporations would have to invest significant time and resources to defend against them. Intra-corporate disputes and boardroom conflicts "can disrupt company operations and lead to huge financial costs and losses." Eric M. Runesson & Marie-Laurence Guy, *Mediating Corporate Governance Conflicts and Disputes*, Global Corporate Governance Forum, at 16 (2007). Indeed, even proxy contests that do not result in litigation can drain millions of dollars from corporate treasuries. *See Bus. Roundtable v. S.E.C.*, 647 F.3d 1144, 1150 (D.C. Cir. 2011) (citing a U.S. Chamber of Commerce estimate placing proxy contest costs for large companies between $4 million and $14 million); *see also* Nickolay Gantchev, *The Costs of Shareholder Activism: Evidence from a Sequential Decision Model*, 107 J. FIN. ECON. 610, 624 (2013) (reporting that a shareholder activism campaign ending in a proxy fight has average costs exceeding $10 million).[9]

The fact that the corporate parties before this Court are closely held does not eliminate the risk of unintended consequences that could follow a decision

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(2010) (concluding, based on an empirical study of 182 shareholder derivative suits in federal court over a twelve-month span, that shareholder derivative suits are "a much bigger player in the world of shareholder litigation than scholars have recognized").

[9] Corporations are responsible for costs associated with the inclusion of shareholder proposals in proxy statements. 17 C.F.R. § 240.14a-8. And while the corporation and the soliciting dissident are each responsible for their costs incurred in waging the proxy contest, reimbursement may be granted to dissidents with shareholder approval. *See* 17 C.F.R. § 240.14a-101.

to recognize corporate free-exercise rights. First, close corporations make up the vast majority of firms in the United States, so any rule that is limited to such firms will still have significant reach.[10] Second, while the shareholders of the companies before this Court are apparently unanimous in their religious beliefs, the same cannot be said of all closely held corporations. Stakeholders in close corporations can and often do disagree about corporate policy.[11] If RFRA accommodations become a common topic of management discussions, intractable religious debates might slow corporate decision making. Even if these disputes are resolved internally, valuable minority shareholders could be removed from boards of directors, lose their management positions, or face dilution of their shares. And if such disputes cannot be resolved, close corporations could become embroiled in costly litigation.

Moreover, even a rule limited to closely held corporations could inadvertently drag other types of corporations into religious disputes. While the difference between family-owned, closely held, and publicly traded corporations may well "seem[] obvious," *Hobby Lobby*, 723 F.3d at 1137 (majority opinion) because the former normally lack "separation of ownership from control and multimember boards of directors," *Korte*, 735 F.3d at 682 n.17, the relevance of that difference is not immediately apparent for purposes of interpreting the word "persons" under

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[10] Venky Nagar *et al.*, *Governance Problems in Closely Held Corporations*, 46 J. FIN. & QUANTITATIVE ANALYSIS 943, 944 (2011).

[11] *Cf.* 1 F. Hodge O'Neal & Robert B. Thompson, *Oppression of Minority Shareholders & LLC Members* § 2.2 (describing, among others, objections to particular decisions and protracted policy disagreements as reasons for conflict in closely held corporations).

RFRA.[12] A holding by this Court that close corporations are "persons" capable of exercising religion under RFRA will invite future litigants, potentially at great cost to defendants, to argue that publicly traded corporations are too.

Though these cases concern disputes regarding contraception, a wide range of religious disputes is at stake. Permitting for-profit corporations to sue to obtain religious exemptions here could "reach far beyond contraception and . . . invite employers to seek exemptions from any number of federally-mandated employee benefits to which an employer might object on religious grounds." *Korte*, 735 F.3d at 689 (Rovner, J., dissenting). In future cases, corporations could choose, or be compelled, to seek exemptions from other employee health-care coverage requirements,[13] federal wage and hours rules,[14] family leave

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[12] *See, e.g.*, *Gilardi*, 733 F.3d at 1224-25 (Randolph, J., concurring in part and concurring in the judgment) (declining to reach the issue of whether a corporation can practice religion, and noting some of the difficult questions that such a holding would raise, including: "Can publicly traded corporations be religious? If so, do they take on the religions of their shareholders as a matter of course?"); *Hobby Lobby*, 723 F.3d at 1173 (Briscoe, C.J., concurring in part and dissenting in part) (noting that the majority "emphasize[s] the fact that Hobby Lobby and Mardel are closely held corporations . . . [b]ut . . . offers no explanation as to why that factor is key in affording Hobby Lobby and Mardel rights under RFRA . . [a]nd . . . fails to explain whether (or why) registration as a publicly held corporation deprives a for-profit corporation of rights under RFRA.").

[13] For instance, Chief Judge Briscoe noted that:

> A Jehovah's Witness could choose to exclude blood transfusions from his corporation's health-insurance coverage. Catholic-owned corporations could deprive their employees of coverage for end-of-life hospice care, and for medically necessary hysterectomies. Scientologist-owned corporations could refuse to offer their employees coverage for antidepressants or emergency psychiatric treatment. And corpora-

requirements,[15] immigration laws,[16] employment discrimination prohibitions,[17] and more.

In sum, creating a corporate right to exercise religion would invite disruptive governance disputes and shareholder actions regarding corporate religious identity. These actions would likely apply to a diverse range of corporations, and would assuredly expand beyond questions concerning contraception. Ultimately, the time and resources required to navigate these contentious social debates would distract corporations from their core business missions.

II. Recognizing Corporate Free-Exercise Rights Would Jeopardize Effective Corporate Management.

Amici's corporate members and partners compete at home and abroad for investment capital, talent, and customers. Successful competition in today's

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tions owned by certain Muslims, Jews, or Hindus could refuse to provide coverage for medications or medical devices that contain porcine or bovine products – including anesthesia, intravenous fluids, prosthesis, sutures, and pills coated with gelatin.

Hobby Lobby, 723 F.3d at 1174 n.8 (Briscoe, C.J., concurring in part and dissenting in part) (citation omitted). Similarly, Judge Rovner observed that a United Methodist corporation could refuse to cover therapies based on stem cells derived from human embryos and a Christian Scientist corporation could refuse to provide employee health insurance altogether. *Korte*, 735 F.3d at 689-91 (Rovner, J., dissenting).

[14] *See Hobby Lobby*, 723 F.3d at 1181 n.3 (Matheson, J., concurring in part and dissenting in part).

[15] *See Korte*, 735 F.3d at 691-93 (Rovner, J., dissenting).

[16] *See Hobby Lobby*, 723 F.3d at 1181 n.3 (Matheson, J., concurring in part and dissenting in part).

[17] *See id.* at 1181 n.3 (Matheson, J., concurring in part and dissenting in part); *Gilardi*, 733 F.3d at 1242 (Edwards, J., concurring in part and dissenting in part).

economy requires employees, management, and shareholders to pursue common interests. Corporate free-exercise rights could be counterproductive to those interests by encouraging religiously motivated employees or shareholders to stake their claim to a corporation's religion, thereby allowing previously secular corporations to become vehicles for religious expression. Such consequences will draw companies into divisive management debates involving contentious social issues.

Corporate employers negotiate with employees individually and collectively on a host of issues that meaningfully affect employee rights. Under the National Labor Relations Act ("NLRA"), covered employers must collectively bargain with the representatives of their employees with respect to wages, hours, and other terms and conditions of employment, including health insurance and benefits. *See* 29 U.S.C. § 158(d). Employers not subject to collective bargaining rules still negotiate these subjects with their employees. In both scenarios, federal law sets minimum requirements regarding labor conditions and employee benefits, including minimum coverage requirements for health insurance plans.

A rule recognizing corporate free-exercise rights would force certain companies – at the behest of their shareholders or employees – to navigate internal debates over whether to abide by federal standards or to seek accommodations based on corporate religious identity. If a corporation can exercise religious views under RFRA, it will not be able simply to cite the minimum coverage requirements that federal law mandates. Instead, corporations will face requests (or demands) to assert religious objections to each and every item subject to minimum coverage requirements when negotiating health insurance plans' terms with employees. Negotiations could also be skewed by possible corporate exemptions from other

federal statutes that protect workers, such as the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and the Equal Pay Act of 1963, 29 U.S.C. § 206(d), among others.

The recognition of corporate free-exercise rights could open the door to costly new lawsuits. Employees might allege a refusal to negotiate in good faith, *see* 29 U.S.C. § 158(d), if management unilaterally sought an exemption from providing certain benefits. Employees could also bring suits claiming violations of the Establishment Clause if the Government or a court decides to accommodate a corporation's religion by affording it a RFRA exemption.[18]

Injecting religion into labor relations could divide employers from employees, and employees from each other. Because receiving an exemption could have significant concrete effects on each party's interests, these debates would further complicate already sensitive discussions about employee protections and benefits. And, because employees have divergent views on these matters as well, making such differences the center point of employer-employee relations could foment conflict among employees.

The talent, motivation, and morale of the workforce are critical drivers of corporate success, and competitive benefits packages are critical to attracting top talent. A perception that employers are chipping away at benefits based on religious beliefs will alienate those who do not share those beliefs. Such consequences would be particularly damaging at a

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[18] *See* Frederick Mark Gedicks & Rebecca G. Van Tassell, *RFRA Exemptions from the Contraception Mandate: An Unconstitutional Accommodation of Religion*, 49 HARV. C.R.-C.L. L. REV. ___ (forthcoming 2014) (*available at* http://ssrn.com/abstract=2328516) (last visited Jan. 15, 2014).

time when religious diversity in the workplace is increasing, and nearly half of American workers have socially diverse workplaces.[19] A loss of workplace diversity would not only reduce employee satisfaction and productivity – key drivers of corporate performance[20] – it would also risk sapping the innovation and creativity that is critical to America's global economic leadership.

In sum, the potential conflicts that could arise among employees and management over corporate religious exercise would be harmful to corporate interests and to the American economy as a whole.

III. Widespread For-Profit Corporate Religious Exercise Would Create an Uneven Regulatory Playing Field.

Widespread corporate religious exercise among for-profit companies would create an uncertain and uneven regulatory playing field. For-profit corporations that succeed in receiving accommodations could reap potentially significant financial benefits unavailable to secular competitors. A regime that permits corporations to reduce or avoid the costs of complying with generally applicable federal rules on reli-

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[19] Tanenbaum Center for Interreligious Understanding, *What American Workers Really Think About Religion: Tanenbaum's 2013 Survey of American Workers and Religion* 9 (2013) (measuring "social diversity" by frequency of workplace social interactions with religious and racial minorities and LGBT persons).

[20] James K. Harter, Frank L. Schmidt & Theodore L. Hayes, *Business-Unit-Level Relationship Between Employee Satisfaction, Employee Engagement, and Business Outcomes: A Meta-Analysis*, 87 J. APPLIED PSYCHOL. 268 (2002); Daniela M. de la Piedra, *Diversity Initiatives in the Workplace: The Importance of Furthering the Efforts of Title VII*, 4 MOD. AM. 43, 45 (2008).

gious grounds will create an unfair competitive environment.

This Court has previously recognized that exempting religious entities from business regulation can have market-distorting effects. *See Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 298 (1985).[21] If the corporate parties in this case prevail, there will likely be a flood of similar suits filed to obtain similar exemptions based on corporate religious beliefs. For example, a corporation adhering to the tenets of the Church of Christ, Scientist – which believes that illness may only be cured by prayer and supplication to God, not medicine – arguably could obtain an exemption from providing employee health coverage for anything other than religious healing, and thereby drastically cut expenses relative to its

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[21] In *Tony & Susan Alamo*, the Court held that the minimum wage, overtime, and recordkeeping requirements of the Fair Labor Standards Act apply to workers engaged in the commercial activities of a religious foundation, even where the foundation's businesses are "infused with a religious purpose." The Court rejected the foundation's attempt to avoid the burdens imposed by FLSA because "the Foundation's businesses serve the general public in competition with ordinary commercial enterprises, . . . [and] the payment of substandard wages would undoubtedly give [the Foundation] and similar organizations an advantage over their competitors." 471 U.S. at 299. The Court recognized that FLSA was intended to prevent exactly this kind of "'unfair method of competition.'" *Id.* (quoting 29 U.S.C. § 202(a)(3)); *see also Donovan v. Tony & Susan Alamo Found.*, 722 F.2d 397, 400 (8th Cir. 1983) ("By entering the economic arena and trafficking in the marketplace, the foundation has subjected itself to the standards Congress has prescribed for the benefit of employees."), *aff'd*, 471 U.S. 290 (1985); *cf. United States v. Lee*, 455 U.S. 252, 261 (1982) ("When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity.").

competitors.[22] Likewise, secular companies could be forced to compete with companies exempt from the obligation to comply with certain provisions of the NLRA[23] or FMLA.[24] If successful, these suits would force secular for-profit corporations (including large publicly traded entities) to compete in the same marketplace with corporations that enjoy exemptions from regulations that they deem objectionable on religious grounds.

It is not possible to predict the full range of laws from which religiously motivated companies might seek exemptions. What is certain, however, is that permitting for-profit corporations to advance such claims would produce uncertainty and asymmetry in the federal regulatory environment. There is no indication that Congress ever contemplated that RFRA would create significant regulatory imbalance. This Court should not interpret the Act in a manner that would produce this kind of market disruption.

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[22] *See Korte*, 735 F.3d at 690-91 (Rovner, J., dissenting).

[23] *Gilardi*, 733 F.3d at 1242 (Edwards, J., concurring in part and dissenting in part).

[24] *See Korte*, 735 F.3d at 691-93 (Rovner, J., dissenting).

CONCLUSION

The judgment of the Tenth Circuit should be reversed and the judgment of the Third Circuit should be affirmed.

Respectfully submitted,

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